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Undefined Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRITTANY XAVIER, an individual; and
THRIFTS AND THREADS, INC., a California
Corporation,

Plaintiffs,

vs.

UNDEFINED, INC., a Delaware Corporation;
and DOES 1-10, inclusive,

Defendants.

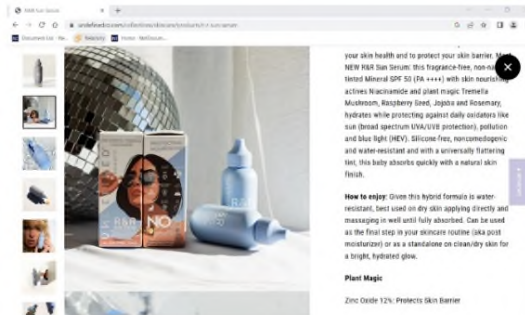
Case No. 4:23-cv-01483-HSG

**STIPULATED PERMANENT
INJUNCTION AND ORDER**

On August 3, 2018, and October 13, 2018, Plaintiff Brittany Xavier (“Ms. Xavier”) posted the following photograph of herself to her Instagram account (the “Xavier Photo”):



On March 29, 2023, Ms. Xavier and Plaintiff Thrifts and Threads, Inc. (“Thrifts and Threads”) (collectively, “Plaintiffs”) filed a Complaint in this action against Defendant Undefined, Inc. (“Undefined”). Plaintiffs allege in the Complaint that Undefined has used a derivative image of the Xavier Photo, and Ms. Xavier’s image, likeness, and persona, without Plaintiffs’ approval or consent, to promote Undefined, and specifically to promote Undefined’s R&R Sun Serum (the “Allegedly Infringing Products”). The following is an exemplar of the image on the Allegedly Infringing Products that Plaintiffs allege is derivative of the Xavier Photo and/or uses Ms. Xavier’s image, likeness, or persona (the “Image”):



The Complaint sets forth cause of actions against Undefined for copyright infringement (17 U.S.C. § 501(a)), violation of the California statutory right of publicity (Cal. Civ. Code § 3344), violation of the California common law right of publicity, false endorsement and unfair competition under the Lanham Act (15 U.S.C. § 1125(a)), unfair competition (Cal. Bus. & Prof. Code §§ 17200, et seq.), and false advertising (Cal. Bus. & Prof. Code §§ 17500, et seq.).

Plaintiffs and Undefined, by and through their respective counsel of record, do hereby stipulate and agree to entry of a permanent injunction under Federal Rule of Civil Procedure 65,

STIPULATED PERMANENT INJUNCTION
 AND ORDER
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enjoining and restraining Undefined, and its officers, agents, servants, employees, principals, and attorneys, and those persons in active concert or participation with Undefined or its officers, agents, servants, employees, principals, and attorneys, on and after June 18, 2024, from:

- (i) using the Xavier Photo without Plaintiffs' consent, including on Undefined's website and social media;
- (ii) using any derivative image of the Xavier Photo, including but not limited to the Image, without Plaintiffs' consent, including on Undefined's website and social media; and
- (iii) using Ms. Xavier's image, likeness, or persona, including but not limited to the Image, without Plaintiffs' consent, including on Undefined's website and social media.

Undefined shall have no obligation to remove any previous social media posts.

This Court shall retain jurisdiction over this Stipulated Permanent Injunction, as well as over the Settlement Agreement and Mutual Release entered into by the Parties pursuant to which this Stipulated Permanent Injunction is being filed, and any applications with regard to enforcement of this Stipulated Permanent Junction or the corresponding Settlement Agreement and Mutual Release between the Parties shall be directed to this Court.

IT IS SO STIPULATED.

Dated: February 22, 2024

NIXON PEABODY LLP

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IT IS SO ORDERED.

Dated: 2/23/2024


U.S. District Court Judge Haywood S. Gilliam, Jr.

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